

UNITED STATES DISTRICT
COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, <i>et al.</i>	§	Civil Action
	§	
	§	
Plaintiffs	§	
	§	
v.	§	Case No. 3:21-cv-259-DCG-JES
	§	-JVB
	§	(Consolidated Cases)
GREG ABBOTT, <i>et al.</i>	§	
	§	
Defendants	§	

MOTION FOR LEAVE FOR LIMITED DISCOVERY OUT OF TIME

On behalf of consolidated Plaintiffs, Plaintiff Mexican American Legislative Caucus (“MALC”) files this Motion for Leave for Limited Discovery Out of Time:

1. On December 17, 2021, the Court entered its Scheduling Order in this case (ECF No. 96). The Scheduling Order sets a deadline of July 15, 2022 for the completion of all fact discovery. The Court specifically permits the parties “by agreement to continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances.”

Id. at 4.

2. The parties have been collectively working to conduct testimonial discovery efficiently over the spring and summer months to complete fact discovery on or before July 15, 2022. But due to numerous scheduling conflicts with third party witnesses, counsel, and individual legislators that have extensive non-litigation and legislative responsibilities, the parties have been unable to finalize all necessary discovery before July 15, 2022.

3. The parties have agreed amongst themselves to take many depositions “out of time” to accommodate deponents’ schedules. MALC, on behalf of all Plaintiffs, only files this Motion

out of an abundance of caution so that the Court may enter an order recognizing these agreements and so that third parties may not use the July 15, 2022 discovery deadline as a reason to resist subpoenas or other permissible discovery devices. Put simply, Plaintiffs fear that certain third party witnesses may refuse to either accept or comply with any subpoena issued in this matter calling for testimony beyond July 15 on the basis that the discovery period is closed. This would frustrate the truth-seeking purpose of discovery and given the signal importance of federal redistricting litigation to the integrity of the democratic process, Plaintiffs believe it is necessary to ensure that the discovery process is robust as reasonably practical. A limited order permitting specific fact discovery out of time would serve that purpose.

4. Specifically, the parties need to take at least the following depositions out of time to prepare this case properly for trial and to ensure a complete and faithful factual record is developed for this Court:

Proposed Witness to be Deposed	Proposed Scheduled Date (if already agreed)	Requesting Party
Thomas Bryan	Agreed, TBD	Plaintiffs
Eric Wienckowski	Agreed, TBD	Plaintiffs
Jeff Archer	Agreed, TBD	Plaintiffs
Dade Phelan	Agreed, TBD	Plaintiffs
Joan Huffman	Agreed, July 28, 2022	Plaintiffs
Adam Kincaid	Agreed to 7 days after any ruling on the pending motion to quash and for a protective order that permits the deposition to go forward	Plaintiffs
30(b)(6) of NRRT	Agreed to 7 days after any ruling on the pending motion to quash and for a protective order that permits the deposition to go forward	Plaintiffs

Rep. Armando Walle	Agreed, TBD	State Defendants
Rep. Terry Meza	Agreed, TBD	State Defendants
Rep. Elizabeth Campos	Agreed, TBD	State Defendants
Margo Cardwell	TBD based on motion to compel ruling	Plaintiffs
Sharon Carter	Agreed, July 29, 2022	Plaintiffs
Jay Dyer	Agreed, TBD	Plaintiffs
Randy Stevenson	TBD	Plaintiffs
David Falk	TBD	Plaintiffs
Dan Patrick	TBD	Plaintiffs
Kevin Brady	TBD	Plaintiffs
Paul Bettencourt	Agreed, July 29, 2022	Plaintiffs
Jasmine Crockett	Agreed, July 19, 2022	State Defendants
Sheila Jackson-Lee	Agreed, TBD	State Defendants
Hugh Shine	Agreed, July 16, 2022	Plaintiffs
Brad Buckley	Agreed, July 18, 2022	Plaintiffs
Jessica Mejia	Agreed, TBD	State Defendants
Patricia Cabrera	Agreed, TBD	State Defendants
Sal Espino	Agreed, TBD	State Defendants
Lydia Camarillo	Agreed, TBD	State Defendants
Joey Cardenas	Agreed, TBD	State Defendants

5. The parties have been diligently working to conduct discovery in this case, but through the confluence of summer scheduling and the sheer number of significant witnesses that

need to be deposed in this important matter, the parties have been unable to complete the discovery by the July 15 deadline. The parties request leave of Court to ensure that the foregoing depositions will be permitted to be taken and enforced ***as if the discovery period were still open as to these witnesses.***

6. Plaintiffs, for example, anticipate that some third party witnesses may be reluctant to cooperate or sit for depositions in the face of a subpoena from this Court if the Court's Scheduling Order has a firm deadline for discovery and there is no order expressly recognizing that the parties may nevertheless conduct the limited discovery as requested. As the Court knows, it has vast discretion in how to handle discovery matters and the parties suggest that this simple request would assist in securing depositions, subpoena compliance, and a more full and complete factual record for the Court's ultimate decision-making.

7. Further, there is no prejudice or injustice in permitting limited, identified testimonial discovery in the next two months. The parties are diligently working through the close of fact discovery, will continue with depositions during the expert discovery period and anticipate being able to conclude all necessary discovery without impacting the September trial date.

Dated: July 15, 2022

Respectfully submitted,

SOMMERMAN, MCCAFFITY,
QUESADA &GEISLER, L.L.P.

/s/ Sean J. McCaffity

George (Tex) Quesada
State Bar No. 16427750
Email: quesada@textrial.com

Sean J. McCaffity
State Bar No. 24013122
Email: smccaffity@textrial.com

3811 Turtle Creek Boulevard, Suite 1400
Dallas, Texas 75219-4461
214/720-0720 (Telephone)
214/720-0184 (Facsimile)

-and-

Joaquin Gonzalez
Texas Bar No. 24109935
1055 Sutton Dr.
San Antonio, TX 78228
jgonzalez@malc.org

ATTORNEYS FOR MALC PLAINTIFFS

CERTIFICATE OF CONFERENCE

I certify by my signature below that I conferred with Patrick Sweeten on behalf of the State Defendants with regard to the relief sought in this motion. The State Defendants are opposed.

/s/ Sean J. McCaffity

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Motion for Leave to Take Limited Depositions Out of Time was filed and served via CM/ECF electronic service on July 15, 2022 to all counsel of record.

/s/ Sean J. McCaffity
